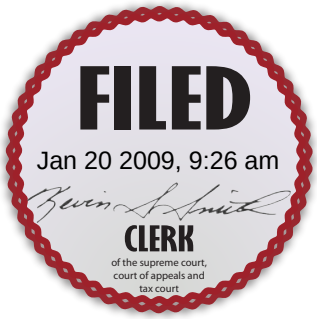

ATTORNEY FOR APPELLANT:

KIMBERLY A. JACKSON
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KELLY A. MIKLOS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

HOWARD W. SQUIER, II,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 90AO2-0806-CR-543
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable David L. Hanselman, Sr., Judge
Cause No. 90C01-0510-FD-99

January 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Howard W. Squier, II, was convicted of two counts of Class D felony theft after a jury trial. He now appeals, arguing that the State failed to prove by a preponderance of the evidence that Wells County was a proper venue for his trial and that the State presented insufficient evidence to support his convictions. Concluding that Wells County was a proper venue because Squier's victim was located in Wells County at the time of the commission of the offense and that the evidence is sufficient to support the jury's determination that Squier exercised unauthorized control over the victim's money, we affirm.

Facts and Procedural History

Max Tyner lived in Wells County. Sometime before 2005, Tyner refinanced a mortgage with the help of Fort Wayne mortgage broker Frank Conner. At that time, Squier worked as an assistant to Conner, and Tyner met Squier during the refinancing process. In early 2005, while he was again working as an assistant for Conner, Squier spoke with the septuagenarian Tyner about the earlier loan and indicated to him that it was "bad" and that he would "get a better one for" Tyner. Tr. Vol. V p. 57.[1] Tyner decided to remortgage his property with the help of Squier.

Before closing on the new loan, Squier called Tyner and asked for $500. *Id.* at 58. Tyner was in Wells County when Squier made this request. *Id.* at 57-58. As an explanation for this request, Squier expressed to Tyner that the loan amount was not enough to cover all of the necessary fees for the refinancing transaction. *Id.* at 58. In

[1] The transcript of Squier's trial is all contained within Volume V. Volumes I-IV of the transcript contain transcripts of pretrial hearings.

response, Tyner mailed a money order for $500 to Squier at Squier's personal address, which Squier had provided to him for this purpose. *Id.* at 58-59.

Squier contacted Tyner a second time asking for additional money. *Id.* at 59. This request came after the closing of the new loan. *Id.* at 60. Squier explained to Tyner that the money was necessary because "the loan that was taken out was short the amount of taxes . . . [o]n [Tyner's] property." *Id.* at 59. In cooperation with Squier's instruction, Tyner mailed a check for $591.69 with the memo notation "Spring Taxes" to Squier's personal address. *Id.* at 59-60; State's Ex. 2. Squier had all of his contact with Tyner regarding the second refinancing process over the telephone. Tr. Vol. V p. 57. During every conversation between the two men, Tyner was in Wells County. *Id.* at 57-58.

Later, Tyner learned that these two amounts – $500 and $591.69 – were not legitimate fees, and he reported Squier's conduct to the Wells County Sheriff's Department. *Id.* at 68. The State charged Squier with two counts of Class D felony theft. Ind. Code § 35-43-4-2(a).

Before trial, Squier filed a motion to dismiss, contending that Wells County was an improper venue. Appellant's App. p. 87. After a hearing on the matter, the trial court denied the motion. *Id.* at 96. The case proceeded to a jury trial, and the jury convicted Squier as charged. Squier now appeals.

Discussion and Decision

On appeal, Squier raises two issues: (1) the State failed to prove by a preponderance of the evidence that Wells County was a proper venue for his trial and (2) the State presented insufficient evidence to support his convictions.

I. Venue

Squier first argues that the State failed to prove by a preponderance of the evidence that Wells County was a proper venue for his trial. The Indiana Constitution provides that, "[i]n all criminal prosecutions, the accused shall have the right to a public trial . . . in the county where the offense has been committed . . . ." Ind. Const. art. I, § 13. The right to be tried in the county in which an offense was committed is both a constitutional and a statutory right. *Baugh v. State*, 801 N.E.2d 629, 631 (Ind. 2004) (citing Ind. Const. art. I, § 13; Ind. Code § 35-32-2-1(a)). However, our Supreme Court has recognized that "[v]enue is not limited to the place where the defendant acted." *Id.* Instead, the Indiana Legislature may provide for concurrent venue when elements of the crime are committed in more than one county. *Id.* at 632. Venue is not an element of the offense. *Id.* at 631. Therefore, although the State is required to prove venue, it may be established by a preponderance of the evidence and need not be proven beyond a reasonable doubt. *Id.* The State may establish proper venue by circumstantial evidence. *Mullins v. State*, 721 N.E.2d 335, 337 (Ind. Ct. App. 1999), *trans. denied*. Thus, the State meets its burden of establishing venue if the facts and circumstances permit the trier of fact to infer that the crime occurred in the given county. *Id.*

Squier contends that his offenses, "to the extent they occurred, were committed in Allen County." Amended Appellant's Br. p. 8. He points to Indiana Code § 35-32-2-2, which provides that "[a] person may be tried for theft or conversion in any county in which he exerted unauthorized control over the property," and argues that because he did not exert unauthorized control over Tyner's money in Wells County, the State failed to

present evidence that established venue in Wells County. *Id.* at 10-12. We disagree. Indiana Code § 35-43-4-1(a) provides, in part, that for the purposes of Indiana's theft statute "'exert[ing] control over property' means to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to secure, transfer, or extend a right to property." Further, such control is "unauthorized" if it is exerted "by creating or confirming a false impression in the other person[.]" Ind. Code § 35-43-4-1(b)(4). Squier focuses upon the location where he physically possessed Tyner's money and would have us read Indiana Code § 35-43-4-1(a) to mean that a person only exerts control over a piece of property once the property is in his or her actual possession. Appellant's Reply Br. p. 3-4. However, exertion of control over a piece of property is not limited to situations in which a person possesses it. Possessing property is only one manner of exerting control over it. I.C. § 35-43-4-1(a). In addition, a person "exert[s] control over property" by "obtain[ing], tak[ing], carry[ing], driv[ing], lead[ing] away, conceal[ing], abandon[ing], sell[ing], convey[ing], encumber[ing], . . . or [by] secur[ing], transfer[ring], or extend[ing] a right to [it]." *Id.*

Here, the State presented evidence that Squier initiated telephone conversations with Tyner, who was in Wells County. Squier's representations during these conversations created the false impression in Tyner's mind that Tyner needed to mail money to him in order to complete the refinancing process. This false impression, created in Wells County, compelled Tyner to mail a money order and a personal check to Squier. *Coburn v. State*, 461 N.E.2d 1154, 1159 (Ind. Ct. App. 1984) (although telephone calls from defendant originated outside of Hamilton County, false impressions

were created in Hamilton County during defendant's telephone conversations with victim, who was located in Hamilton County). Squier makes no allegation that the money order and check were mailed from anywhere but Wells County. The evidence reflects actions which took, led away, or secured money from Tyner while he was in Wells County. Thus, the State proved by a preponderance of the evidence that Wells County was a proper venue for Squier's trial.[2]

II. Sufficiency of the Evidence

Squier next argues that the State presented insufficient evidence to support his convictions for theft. Specifically, he contends that the State presented insufficient evidence that he intentionally exercised *unauthorized* control over Tyner's property. When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the factfinder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Id.* The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.* at 147.

[2] Squier's reliance upon *Kalady v. State*, 462 N.E.2d 1299 (Ind. 1984), and *Mullins*, 721 N.E.2d 335, is misplaced. Appellant's Br. p. 12. In both *Kalady* and *Mullins*, venue was found proper in counties where a defendant cashed or deposited a check. The cases do not preclude concurrent venue in other counties.

In order to convict Squier of Class D felony theft, the State had to prove that he "knowingly or intentionally exert[ed] unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use[.]" I.C. § 35-43-4-2(a). The State charged Squier with knowingly exerting unauthorized control over the money order and personal check mailed by Tyner to Squier. Appellant's App. p. 39-40. The crux of Squier's sufficiency challenge is his contention that Tyner authorized him to exert control over the money order and check by voluntarily mailing them to him. However, the fact that Tyner mailed the $500 money order and $591.59 personal check to Squier is irrelevant to the question of whether Squier exercised unauthorized control over them. Control is "unauthorized" if it is exerted "by creating or confirming a false impression in the other person[.]" I.C. § 35-43-4-1(b)(4). Here, the State presented evidence that Squier created the impression in Tyner that Tyner needed to send the money order and personal check to him to properly complete the mortgage refinancing transaction. Tr. Vol. V p. 58-60. According to testimony provided by Conner, this impression was false. *Id.* at 42. Further, the State presented evidence that it was because of this false impression that Tyner mailed the money order and personal check to Squier. *Id.* at 63 (Tyner testifying that he would not have paid the two additional amounts to Squier if he had known that they were not legitimate). Squier's argument in this regard is simply a request that we reweigh the evidence, which we cannot do.

Likewise, Squier's claim that he did not knowingly act without authorization is a request that we reweigh the evidence. During trial, Conner testified that Squier was not authorized to seek a fee or the tax payment from Tyner. *Id.* at 42, 46. Instead, these

payments were to come directly from the proceeds of the loan. *Id.* at 42. The jury could reasonably find from this evidence that Squier had the requisite intent to be guilty of theft.

The judgment of the trial court is affirmed.

RILEY, J., and DARDEN, J., concur.